

MT LEGISLATIVE HISTORY

Chapter 482 19 89Bill H 204 S _____Original bill & hist. ☒ CH. Committee on JudiciaryS. Committee on JudiciaryHearing Date(s) Jan 30 ☒ CHearing Date(s) Mar 09 ☒ CFeb 01 ☒ C_____ ☐ C_____ ☐ C_____ ☐ C_____ ☐ C_____ ☐ CDate Out Feb 01 ☒ CMar 09 ☒ CDid this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

HOUSE BILL NO. 204

INTRODUCED BY COBB

BY REQUEST OF THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES

IN THE HOUSE

JANUARY 16, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 17, 1989	FIRST READING.
FEBRUARY 3, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 6, 1989	PRINTING REPORT.
FEBRUARY 7, 1989	ON MOTION, CONSIDERATION PASSED FOR THE DAY.
FEBRUARY 8, 1989	SECOND READING, DO PASS.
FEBRUARY 9, 1989	ENGROSSING REPORT.
FEBRUARY 10, 1989	THIRD READING, PASSED. AYES, 90; NOES, 5.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 11, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 15, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 16, 1989	SECOND READING, PASS CONSIDERATION.
MARCH 17, 1989	SECOND READING, CONCURRED IN.
MARCH 20, 1989	THIRD READING, CONCURRED IN.

AYES, 48; NOES, 0.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 30, 1989

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

MARCH 31, 1989

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 204
 2 INTRODUCED BY Bob
 3 BY REQUEST OF THE DEPARTMENT OF SOCIAL
 4 AND REHABILITATION SERVICES
 5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE DEPARTMENT
 7 OF SOCIAL AND REHABILITATION SERVICES OR A COUNTY A LIEN ON,
 8 RATHER THAN A SUBROGATION INTEREST IN, A THIRD-PARTY
 9 RECOVERY BY A RECIPIENT WHOSE MEDICAL EXPENSES WERE PAID BY
 10 THE DEPARTMENT OR COUNTY; REVISING PROVISIONS RELATING TO
 11 NOTICE TO THE DEPARTMENT OR COUNTY; PROVIDING FOR LIABILITY
 12 FOR FAILURE TO SATISFY THE LIEN; AMENDING SECTIONS 53-2-611,
 13 53-2-612, AND 53-6-143, MCA; REPEALING SECTION 53-3-315,
 14 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND
 15 APPLICABILITY DATES."

16
 17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18 **Section 1.** Section 53-2-612, MCA, is amended to read:

19 "53-2-612. Subrogation--and--third-party-liability-for
 20 certain--benefits: Lien of department or county upon
 21 third-party recoveries. (1) The department is subrogated to
 22 the right--of--each--recipient--or--beneficiary--of--medical
 23 benefits--to--recover--damages--or--compensation--from--a--third
 24 party--to--the--extent--necessary--to--reimburse--the--department
 25 for--medical--benefits--paid--to--or--on--behalf--of--the--recipient

1 or-beneficiary. Upon determination that--a--third--party--is
 2 liable--for--the--medical--expenses--of--a--recipient--or
 3 beneficiary--under--this--section,--the--department--shall
 4 immediately--notify--the--third-party--of--the--subrogation. Upon
 5 notice by the department, a county, or the recipient to a
 6 third party or his insurer as provided in subsection (5)(b),
 7 the department or county has a lien upon all money paid by a
 8 third party or his insurer in satisfaction of a judgment or
 9 settlement arising from a recipient's claim for damages or
 10 compensation for personal injury, disease, illness, or
 11 disability to the extent that the department or county has
 12 paid medical assistance on behalf of the recipient for the
 13 same personal injury, disease, illness, or disability.

14 (2) The department or county may, in the name of the
 15 recipient or-beneficiary-to-whom-or on whose behalf medical
 16 benefits-have assistance has been paid and-to--whose--rights
 17 the--department--has--been--subrogated by the department or
 18 county, commence and prosecute to final conclusion any
 19 action which may be necessary to recover from a third party
 20 or his insurer compensation or damages for medical costs
 21 incurred--by--the--recipient--or--beneficiary assistance paid by
 22 the department or county on behalf of the recipient. This
 23 section does not affect the right of the recipient or
 24 beneficiary to initiate and prosecute to final conclusion an
 25 action for damages or compensation in his own name in

accordance with the provisions of this section.

(3) (a) The lien:

(i) applies to all money paid by a third party or his insurer regardless of whether the recovery is allocated by the parties or a court to any particular type or element of damages; and

(ii) is subordinate to the lien of an attorney under 37-61-420.

(b) Unless specifically provided by law, the recipient's right to recover damages or compensation from a third party or his insurer may not be reduced or denied on the ground that the recipient's costs of medical treatment and medical-related services have been paid by the department or county under any public assistance program.

(c) If the department or county has a lien under this section and a physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, or hospital has an unpaid lien on the recipient's recovery, as provided in 71-3-1114, and there is not a sufficient amount to satisfy each lien, each lienor is entitled to share in the recovery in the same proportion that its claim bears to the total claims of all lienors. Each lienor's proportion must be determined without deduction from any claim of the lienor's share of attorney fees and costs, if any.

(d) A recipient may not, without the consent of the department or county, release a third party or his insurer from liability for a personal injury, disease, illness, or disability for which the department or county paid or may pay medical assistance.

(e) From the amount collected by the department, county, or recipient from legal proceedings or as a result of settlement, reasonable attorney fees and costs must be first deducted first and paid. Unless the department or county and the recipient or-beneficiary agree to a different settlement, the amount previously paid as medical benefits assistance by the department or county, less a pro rata share of attorney fees and costs, must be deducted next and paid to the department or county. The remainder, if any, must be paid to the recipient or-beneficiary. However,--any recipient-or-beneficiary-who-initiates-an-action-to--recover damages-or-compensation-shall-receive-no-less-than-one-third of--the--total--amount--recovered--after--the--deduction--of reasonable-attorney-fees-and-costs-

(4) (a) A recipient or-beneficiary of medical benefits assistance or his legal representative shall notify the department or county by means-of-a certified letter within 30 days if the recipient or--beneficiary or his legal representative asserts a claim against a third party or his insurer for damages or compensation for an a personal

1 injury, disease, illness, or disability for which the
 2 department or county paid medical benefits assistance in
 3 whole or in part or for which the recipient has applied for
 4 medical assistance. The notice must be mailed to the
 5 director of the department and or the director of the county
 6 department that paid medical assistance. At the same time, a
 7 copy must be sent by certified mail to the third party or
 8 his insurer.

9 (b) The notice must contain the following information:

10 (a)(i) the name and address of the recipient or
 11 beneficiary and his legal representative, if any;

12 (b)(ii) the name and address of the third party alleged
 13 to be liable to the recipient or beneficiary;

14 (c)(iii) the name and address of any known insurer of
 15 the third party; and

16 (d)(iv) the judicial district and docket number of any
 17 action filed.

18 (c) A recipient and his legal representative are
 19 jointly and severally liable to the department or county for
 20 the amount it is entitled to receive under this section if:

21 (i) the recipient or his legal representative fails to
 22 timely notify the department or county or fails to mail a
 23 copy of the notice to the third party or his insurer; and

24 (ii) a third party or his insurer that did not receive
 25 notice from the department or county as provided for in

1 subsection (5)(b) pays the recipient or his legal
 2 representative without satisfying any lien of the department
 3 or county.

4 (5)--(a)--No-recipient-or-beneficiary-who--has--received
 5 medical--assistance--from--the--department-as-a-result-of-an
 6 injury-which-creates-a-claim-or-cause-of-action-may--release
 7 the--liable-third-party-or-his-insurer-from-liability-to-the
 8 department--If-any-liable-third-party-or-his-insurer--after
 9 receiving--notice--of--the--department's--subrogation-claim--
 10 makes--payment--on--account--of--injury--or--death--and--the
 11 department--has-not-been-reimbursed-for-the-medical-benefits
 12 paid-on-behalf-of-the-recipient-or-beneficiary--the--insurer
 13 or-third-party-is-liable-to-the-department-for-the-amount-of
 14 medical-benefits-paid-by-the-department--

15 (b)--The--notice--requirements-of-subsection-(5)(a)-are
 16 satisfied-if:

17 (i)--the--insurer--receives--from--the--department--by
 18 certified--mail--a--statement-of-the-claims-paid-or-medical
 19 services-rendered-by-the-department--together-with--a--claim
 20 for-reimbursement--or

21 (ii)--the--insurer--receives-a-claim-from-a-recipient-or
 22 beneficiary-stating-that-the-recipient--or--beneficiary--has
 23 applied--for--or--has--received--medical-assistance-from-the
 24 department-in-connection-with-the-same-claim--

25 (5) (a) If a third party or his insurer that has

1 received notice of the department's or county's lien as
2 provided for in subsection (5)(b) makes payment in whole or
3 in part of the recipient's claim without first satisfying
4 the lien of the department or county, the third party or his
5 insurer is liable to the department or county for the amount
6 the department or county is entitled to receive under this
7 section.

8 (b) For the purposes of subsection (5)(a), a third
9 party or his insurer has been given notice if:

10 (i) the department or county mails, by certified mail,
11 to the third party or his insurer:

12 (A) a statement of the medical assistance paid or
13 which may be paid by the department or county on behalf of
14 the recipient; and

15 (B) a claim for reimbursement;

16 (ii) the recipient or his legal representative mails,
17 by certified mail, to the third party or his insurer:

18 (A) a copy of the notice required by subsection
19 (4)(a); or

20 (B) a statement stating that the recipient has applied
21 for or has received medical assistance from the department
22 or county in connection with the same claim; or

23 (iii) the recipient or his legal representative has
24 commenced an action against the third party or his insurer
25 for damages or compensation for personal injury, disease,

1 illness, or disability for which the department or county
2 has paid or may pay medical assistance, in whole or in part,
3 and the department or county files in the court in which the
4 action is pending a notice of lien stating that a lien is
5 claimed for medical assistance on any money paid in
6 satisfaction of any judgment in or settlement of the action
7 and that:

8 (A) medical assistance in a stated amount has been
9 paid by the department or county on behalf of the recipient;
10 or

11 (B) medical assistance may be paid on behalf of the
12 recipient.

13 (6) As used in this section, the following definitions
14 apply:

15 (a) "County" means a county department of welfare in a
16 county that has not transferred its public assistance
17 responsibilities to the state under the provisions of Title
18 53, chapter 2, part 8.

19 (b) "Legal representative" means an attorney,
20 attorney-in-fact, conservator, estate, guardian, personal
21 representative, recipient's survivor, or any other person,
22 firm, or corporation having or exercising authority on
23 behalf of a recipient with respect to a claim or action to
24 recover damages or compensation from a third party or his
25 insurer.

(c) "Recipient" means a person on whose behalf the department or a county has paid or may pay medical assistance for the cost of medical treatment and medical-related services for personal injury, disease, illness, or disability. If the context allows, the term includes a recipient's legal representative.

(d) "third Third party" means an individual, institution, corporation, or public or private agency which that is or may be liable to pay all or part of the medical cost of medical treatment and medical-related services for personal injury, disease, illness, or disability of a recipient or beneficiary of medical benefits assistance from the state department or a county and includes but is not limited to insurers, health service organizations, and those parties liable or who may be liable in tort."

Section 2. Section 53-6-143, MCA, is amended to read:

"53-6-143. ~~Exclusion---of---liens-----recoveries.~~
Limitations on liens and recoveries. No applicant hereunder may be (1) An applicant for or recipient of assistance may not be required to execute an agreement for creating a lien on his real property.

(2) No A lien may be imposed against the real or personal property of an individual prior to his death on account for recovery of medical assistance paid or to be paid on his behalf {except-pursuant-to-the-judgment-of-a

court-on-account-of-benefits-incorrectly-paid-on--behalf--of the--individual};--There--may--be--no-adjustment-or-recovery {except,--in-the-case-of-an-individual-who-was--65--years-of age--or--older--when--he--received--the-assistance,--from-his estate-and-then--only--after--the--death--of--his--surviving spouse,--if-any,--and-only-at-a-time-when-he-has-no-surviving child-who-is-under-age-18-or-is--blind--or--permanently--and totally--disabled)--of-any-medical-assistance-correctly-paid on-behalf-of-an-individual;--To--the--extent--necessary--for reimbursement--of--medical-assistance-paid-to-an-individual, the-department-of--social--and--rehabilitation--services--is subrogated-to-the-rights-of-the-individual-to-recover-from-a third--party--who-may-be-liable-to-pay-the-medical-expenses; as-provided-in-53-2-612; under this chapter only:

(a) pursuant to a judgment of a court for recovery of assistance incorrectly paid on behalf of the recipient; or

(b) on a third-party recovery as provided in 53-2-612.

(3) (a) The department may recover medical assistance correctly paid on behalf of a recipient only:

(i) as provided in 53-2-611, except that it may not recover for any assistance paid on behalf of a recipient for services provided before he reached age 65; or

(ii) as provided in 53-2-612.

(b) The department may recover under 53-2-611 only:

(i) after the death of the recipient's surviving

1 spouse, if any; and

2 (ii) if there is no surviving child of the recipient
3 who is under age 21, blind, or permanently and totally
4 disabled.

5 (4) Recoveries shall must be prorated to the federal
6 government and the state in the proportion to which each
7 contributed to the medical assistance. Recovery for medical
8 assistance paid prior to July 1, 1974, shall be prorated to
9 reimburse the county share of participation. The provisions
10 of this section are hereby extended to provide for the
11 recovery of all medical assistance paid under this part and
12 likewise to all medical aid to the aged assistance paid by
13 the department of social and rehabilitation services during
14 the period of time July 1, 1965, through June 30, 1967."

15 **Section 3.** Section 53-2-611, MCA, is amended to read:

16 "53-2-611. Recovery from recipient's estate. (1) Upon
17 the death of any recipient of ~~public-assistance--other--than~~
18 ~~aid--to--families--with-dependent-children-or-general-relief~~
19 medical assistance under Title 53, chapter 6, part 1, the
20 department shall execute and present a claim against the
21 estate of such person within the time specified in the
22 published notice to creditors in the estate matter for the
23 total amount of assistance paid under this title, separately
24 stating therein the amount of all assistance paid ~~from--and~~
25 on or after July 1, 1953. The department's claim is subject

1 to the limitations specified in 53-6-143(3).

2 ~~{2}--The-department-shall-not-assert-its--claim--during~~
3 ~~the-lifetime-and-continued-occupancy-of-any-real-estate-of-a~~
4 ~~deceased--recipient's--estate--by--the--surviving--spouse-or~~
5 ~~dependent-as-a-home-or-residence-unless-other--claimants--or~~
6 ~~persons-shall-have-instituted-proceedings-for-the-probate-of~~
7 ~~the--estate--of--the--deceased--recipient;-in-which-case-the~~
8 ~~department-shall-file-its-claim-hereunder;~~

9 ~~{3}{2}~~ All sums money recovered hereunder under this
10 section from any source shall must be distributed to the
11 county and to the general fund of the state of Montana as
12 their according to the county's or state's interests may
13 appear. If the federal law so requires, the federal
14 government ~~shall--be~~ is entitled to a share of any amounts
15 collected hereunder under this section in proportion to the
16 amounts which that it has contributed to the grants
17 recovered, and-the The amount due the United States ~~shall~~
18 must be promptly paid by the department to the United States
19 government."

20 NEW SECTION. **Section 4.** Repealer. Section 53-3-315,
21 MCA, is repealed.

22 NEW SECTION. **Section 5.** Extension of authority. Any
23 existing authority to make rules on the subject of the
24 provisions of [this act] is extended to the provisions of
25 [this act].

1 NEW SECTION. **Section 6.** Effective date --
2 applicability -- retroactive applicability date. (1) [This
3 act] is effective on passage and approval.
4 (2) [Sections 1 and 4] apply to recoveries for
5 personal injury that occurs, disease or illness that is
6 diagnosed, or disability that commences on or after [the
7 effective date of this act].
8 (3) [Sections 2 and 3] apply retroactively, within the
9 meaning of 1-2-109.

-End-

In compliance with a written request, there is hereby submitted a Fiscal Note for HB204, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act allowing the department of Social and Rehabilitation Services or a county a lien on, rather than a subrogation interest in, a third party recovery by a recipient whose medical expenses were paid by the department or county; revising provisions relating to notice to the department or county; providing for liability for failure to satisfy the lien; amending Sections 53-2-611, 53-2-612, and 53-6-143, MCA; repealing Section 53-3-315, MCA, and providing an immediate effective date and applicability dates.

ASSUMPTIONS:

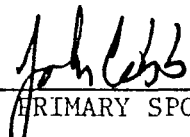
1. The federal medicaid matching rate is 71.17% in FY90 and 71.28% in FY91.
2. Five additional Medicaid tort cases each year will be completed because of the requirement to notice the department or county.
3. The average recovery per Medicaid tort case is \$5,483.
4. There is no impact on local government expenditures.

FISCAL IMPACT:Expenditures:

The passage of this bill will not affect department expenditures.

	FY90			FY91		
	Current	Proposed		Current	Proposed	
Revenue:	Law	Law	Difference	Law	Law	Difference
General Fund	\$181,629	\$189,413	\$ 7,784	\$180,936	\$188,690	\$ 7,754
Federal Funds	448,371	467,587	19,216	440,064	468,310	19,246
Total	\$630,000	\$657,000	\$ 27,000	\$630,000	\$657,000	\$ 27,000


RAY SHACKLEFORD, BUDGET DIRECTOR
OFFICE OF BUDGET AND PROGRAM PLANNING
1/23/89
DATE


JOHN COBB, PRIMARY SPONSOR
1/26/89
DATE

Fiscal Note for HB204, as introduced

HB204

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dave Brown, on January 30, 1989, at 9:05 a.m.

ROLL CALL

Members Present: All members were present with the exception of the following:

Members Excused: Rep. Hannah

Members Absent: None

Staff Present: Julie Emge, Secretary
John MacMaster, Legislative Council

Announcements/Discussion: None

HEARING ON HOUSE BILL 204

Presentation and Opening Statement by Sponsor:

Rep. Cobb stated that HB 204 was brought to him at the request of the Department of SRS. HB 204 allows SRS to have a lien rather than a subrogation interest in order to recover benefits from a recipient. Currently, SRS has a subrogation interest in recipient recovery against libel third parties to the extent that the Dept. has paid medical benefits. This law also changes the right of subrogation to a lien, taking effect upon notice. Additionally, it strengthens notice requirements of recipients and the representatives who receive claims or file suits for recovery. It also removes the provision guaranteeing 1/3 of the settlement or recovery to the recipient. The priority of the lien will be the same as what hospitals and doctors have right now. Rep. Cobb presented as EXHIBIT 1 proposed amendments for the Committee's consideration.

Testifying Proponents and Who They Represent:

Russ Cater, Chief Legal Council for the Dept. of SRS

Proponent Testimony:

Russ Cater, in support of HB 204 stated the Dept. of SRS administers two medical assistance programs. One, is the medicaid program which is a joint federal and state funded program. That is where the bulk of their medical expenses are. In addition, they also administer a general relief

medical program. Under that program, the benefits are paid to people who are usually not eligible for the Medicaid program for one reason or another. However, they fall within the need that is in the required; therefore, the state is paying 100% of the medical costs. They also have a third program which they refer to as the County Medical Assistance Program. This program is the same as the general relief program except it is administered and paid for 100% by counties. Counties that have not opted to be assumed by the state. Currently, the state has assumed 12 counties where they take care of all their welfare needs. That is why there is a distinction in the bill that is made between the Dept. and the two county departments. This bill applies to both county departments and public welfare as well as to the state programs. Mr. Cater commented that because of the fact that the current law allows the Dept. a subrogation right, the courts have interpreted the right of subrogation to mean an equitable right. The Dept. and the judge should be able to figure out what is equitable. What the Dept. of SRS is attempting to do with this law is to place them on an even keel with their other medical providers such as physicians, hospitals, and nurses. Currently, nurses, hospitals and physicians have a lien which is attached to any kind of settlement that would result from an injury or settlement of the action. Mr. Cater presented for the Committee's review proposed amendments (EXHIBIT 2).

Testifying Opponents and Who They Represent:

Michael Sherwood, Montana Trial Lawyers Association
Jacqueline Terrell, American Insurance Association

Opponent Testimony:

Michael Sherwood stated the Montana Trial Lawyers Assoc. don't have a problem with the concept that the State of Montana or the Dept. of SRS should have a lien that is on the same par as other health care providers or people who have paid money for the medical benefit of someone who is injured. They do, however, have multiple concerns with the bill itself. First, one of the concerns that they are not worried about, is that it does allow priorities for attorney's fees. Referring to page 3, lines 7 and 8, the lien is subordinate to the lien of an attorney under 37-61-420. There is still the encouragement for an attorney to go out and collect the money and not have it taken away from them because of this superior lien. On page 3, lines 23 and 25 each lieners proportion must be determined without deduction from any claim or the lienor's share of attorney fees and costs if any. Mr. Sherwood expressed that he does not know what that means. It seems ambiguous. It appears to potentially conflict with lines 7 and 8. Another potential problem with substituting a lien for subrogation is not so much the fact that they are adding the lien ability, but they are getting

that SRS would want subrogation. Eliminating the subrogation claim may preclude the state from collecting fees in some instances in which there is no incentive on behalf of the person who has received the SRS benefits to go against the state. Mr. Sherwood stated that the biggest problem that he has with the bill is the requirement that the SRS approve a settlement before it is effected. There isn't abuse of attorneys filing cases, collecting the money from their clients knowing that the SRS has paid out money and not giving the money to SRS. Fundamentally, he doesn't have any problems with the lien. He does, however, have concerns about SRS being in the middle of a settlement negotiation. What is effectively going to happen is insurers are going to pay less money and the state is going to continue to pay the same amount of money and get reimbursed less from insurers from the results of this bill. Mr. Sherwood submitted written testimony listed as EXHIBIT 3.

Jacqueline Terrell, representing the American Insurance Association stated that she is also conveying the comments of Gene Phillips of the National Association of Independent Insurers. The American Insurance Assoc. and the NAII do not oppose the concept of a lien, as opposed to subrogation. They do, however, have some concerns about the way this particular bill was drafted. Their primary concern was well outlined by Mr. Sherwood and that is the involvement of SRS or the county in the settlement of the law suit. The reality is that many settlements take place on the steps of the court house. They happen quickly and there is a tremendous amount of communication between plaintiff's lawyers and the defense lawyers at that moment. To have to involve the State Dept. in that particular settlement procedure and to obtain their consent to the release will bog that process down unduly. All parties will not benefit from that. Mrs. Terrell again stated that they don't oppose the concept of the lien. They are sympathetic to SRS's problem that this bill attempts to address. She specifically requested the Committee to review the involvement of SRS in the settlement practice and in the release of the claims.

Questions From Committee Members: Rep. Addy questioned if there were federal requirements that they change, or is the Dept. just sore about the Cascade County case. Mr. Cater replied that it is a little bit of both. Obviously, they did not let the federal government know anything about the Cascade County case, because they are fearful that they would want their money in spite of the fact that they didn't get anything at all.

Additionally, Rep. Addy questioned Mr. Cater as to why the Dept. did not pursue the matter themselves when they could have. Mr. Cater responded that the problem is that the current law allows the Dept. to file an independent action. However, it

is very difficult for the Dept. to institute an action for several reasons. One, the cost that would be involved, both in dollar amounts or if they were going to hire an attorney. The other problem is an independent action would really be a conflict of interest. However, in the case of Cascade County they were more than willing to pay their share of the attorney's fees.

Rep. Eudaily drew the Committee's attention to the list of health care providers on page 3, lines 15-18. Are those all the health care providers that would have a lien? Mr. Cater responded that they the ones that currently have a lien in Montana State law. Rep. Eudaily asked if the money goes back to the general fund or if it goes back to SRS. Mr. Cater stated that it is his understanding that it goes back to the general fund, but that he could be mistaken.

Closing by Sponsor: Rep. Cobb closed.

DISPOSITION OF HOUSE BILL 69

Motion: Rep. Mercer made a motion to reconsider action taken on HB 69, motion was seconded by Rep. Wyatt. A vote was taken and PASSED unanimously to reconsider previous action taken.

Rep. Mercer moved HB 69 DO PASS, motion seconded by Rep. Wyatt. Motion CARRIED.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Mercer moved to amend page 1, line 25, strike "and", insert or. On top of page 2, following "state", insert a comma or a combination of the two. The purpose of this amendment could be a unit that has state or leased land or leased land only. Amendment was seconded by Rep. Darko. Motion CARRIED.

Recommendation and Vote: Rep. Mercer moved HB 69 DO PASS AS AMENDED, motion seconded by Rep. Darko. A vote was taken and CARRIED unanimously.

DISPOSITION OF HOUSE BILL 154

Motion: A DO PASS motion was made by Rep. Mercer, motion seconded by Rep. Gould.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Addy moved the proposed amendments (EXHIBIT 4), seconded by Rep. Gould. A vote on the amendments was taken and CARRIED.

Recommendation and Vote: Rep. Addy moved HB 154 DO PASS AS AMENDED, motion seconded by Rep. Gould. A vote was taken

DAILY ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date JAN. 30, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH			X
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

SUMMARY OF AN ACT AMENDING SECTION 53-2-612, MCA

Present law grants SRS a subrogation interest in recipient recoveries against liable third parties to the extent the department has paid medical benefits. The right of subrogation is an equitable right and, under current law, SRS recovers nothing until the recipient is "made whole". Thus, even though SRS has paid, for example, \$150,000 in medical expenses and the recipient recovers \$500,000 from a liable third party, the department may receive none of the \$500,000 recovery because the recipient may have a right to proceed against yet another third party or the \$500,000 may have been allocated by the court or by agreement of the parties to non-medical damages. SRS believes the liable third party, rather than medicaid or the general relief medical program, should bear the cost of the recipient's medical expenses.

This Act would assure repayment to SRS upon a recipient's recovery from a liable third party. This would be accomplished by the following provisions of the bill:

(1) Change the right of subrogation to a lien taking effect upon notice as defined in the Act. A lien would attach to the proceeds of any recovery and would not be subject to reduction based upon other potential recovery by the recipient or allocations of damages by the court or parties. A county paying medical public assistance benefits would be entitled to the same lien. The bill would place SRS on an equal footing with hospitals and other health care providers who are granted liens under existing law. The department would retain the discretion to accept less than full payment in hardship cases.

(2) Strengthen notice requirements for recipients and their representatives, including attorneys, who assert claims or file suits for recovery and establish liability for failure to notify. The recipient or his representative would be required to notify SRS and the liable third party or his insurer. If the liable third party or his insurer were not given notice by the recipient or his legal representative and then paid the claim without paying SRS, the recipient and his legal representative would be liable to SRS for the amount it would have otherwise been entitled to recover.

(3) Remove provision guaranteeing 1/3 of settlement or recovery to recipient. Although SRS believes this provision creates an extra incentive for recipients to seek recovery, the federal government has notified SRS that this provision is contrary to federal law. That is, the federal government calculates the repayment due to it from SRS based upon the entire amount received by the recipient, rather than the amount remaining to SRS after payment of attorney fees, costs and the 1/3 minimum recipient's share. If the current 1/3 provision is retained, the state may be required to refund to the federal government more money

than SRS in fact receives from a recipient's recovery. This would in turn preclude any recovery for the state general fund in some cases and may even require additional general fund expenditures to make up the full share of the federal government's recovery.

(4) Several other provisions are added to protect the SRS right to recovery:

a. Priority of SRS lien is established in relation to other liens.

b. Recipient's right to recovery is protected from possible amendment of the collateral source rule, which may reduce a defendant's liability in cases where other parties have paid expenses or damages associated with the medical condition.

(5) Existing statutes on SRS lien rights and estate recovery rights are clarified and brought into conformance with federal law.

Medicaid recovered \$630,000.00 last year from tort cases alone. The same is expected this year and future years could reach the million dollar mark. Without this legislation these recoveries would be jeopardized.

HOUSE BILL 204

SUMMARY OF AN ACT AMENDING SECTION 53-2-612, MCA
(Medical assistance lien)

Present law grants SRS a subrogation interest in recipient recoveries against liable third parties to the extent the department has paid medical benefits. The right of subrogation is an equitable right and, under current law, SRS recovers nothing until the recipient is "made whole". Thus, even though SRS has paid, for example, \$150,000 in medical expenses and the recipient recovers \$500,000 from a liable third party, the department may receive none of the \$500,000 recovery because the recipient may have a right to proceed against yet another third party or the \$500,000 may have been allocated by the court or by agreement of the parties to non-medical damages. SRS believes the liable third party, rather than medicaid or the general relief medical program, should bear the cost of the recipient's medical expenses.

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(2) Strengthen notice requirements for recipients and their representatives, including attorneys, who assert claims or file suits for recovery and establish liability for failure to notify. The recipient or his representative would be required to notify SRS and the liable third party or his insurer. If the liable third party or his insurer were not given notice by the recipient or his legal representative and then paid the claim without paying SRS, the recipient and his legal representative would be liable to SRS for the amount it would have otherwise been entitled to recover.

(3) Remove provision guaranteeing 1/3 of settlement or recovery to recipient. Although SRS believes this provision creates an extra incentive for recipients to seek recovery, the federal government has notified SRS that this provision is contrary to federal law. That is, the federal government calculates the repayment due to it from SRS based upon the entire amount received by the recipient, rather than the amount remaining to SRS after payment of attorney fees, costs and the 1/3 minimum recipient's share. If the current 1/3 provision is retained, the state may be required to refund to the federal government more money

than SRS in fact receives from a recipient's recovery. This would in turn preclude any recovery for the state general fund in some cases and may even require additional general fund expenditures to make up the full share of the federal government's recovery.

(4) Priority of line. SRS lien is on the same priority as the medical provider liens. An attorney's lien, however, has a higher priority.

(5) Existing statutes on SRS lien rights and estate recovery rights are clarified and brought into conformance with federal law.

Medicaid recovered \$630,000.00 last year from tort cases alone. The same is expected this year and future years could reach the million dollar mark. Without this legislation these recoveries would be jeopardized.

Submitted by: *Russ Carter*
Department of Social &
Rehabilitation Services

WITNESS STATEMENT

NAME Mike Sherwood BUDGET _____

ADDRESS _____

WHOM DO YOU REPRESENT? MTLA

SUPPORT _____ OPPOSE X AMEND _____

COMMENTS: While MTLA does not oppose the

concept this bill is ambiguous and highly
restrictive. Page 3, lines 25 to 25,

seems contradictory to other language granting
~~some~~ priority to an attorney's lien.

Page 4, lines 1 through 5, will require
SRS review of all settlements, because ~~some~~ a settlement
will require a release.

The addition of the "county" further complicates
the issue. What if SRS and county disagree re
distribution of the proceeds.

Notice requirements are cumbersome. Failure
to strictly comply with notice makes attorney liable.
Current practice generally results in a release
executed by client and attorney indemnifying the
insurer from all subrogation claims.

The elimination of the $\frac{1}{3}$ requirement and subrogation
discourages collection from insurers.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. HOUSE BILL 204DATE JAN. 30SPONSOR REP. COBB

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Mike Sherwood	MTLA		X
Fuss Cater, SRS	Helena	X	
Jacqueline Terrell	American Ins. Assoc.		X
KEENE PHILLIPS	NAII		X

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

as menial work and non-threatening to the normal job market. It would entail things that normally wouldn't get done in the county.

Rep. Brown stated that in order for them to get around not passing a special or local act, they could say all communities over 100,000.

Recommendation and Vote: Rep. Brown suggested to HOLD the bill as amended for further action.

DISPOSITION OF HOUSE BILL 204

Motion: Rep. Addy moved DO PASS, motion seconded by Rep. Aafedt.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Addy moved proposed amendments submitted by Russ Cater of the Dept. of Social and Rehabilitation Services (EXHIBIT 9). Motion seconded by Rep. Gould and CARRIED unanimously.

Rep. Addy moved to amend page 3, line 6, strike "and", and on line 8 strike ".", insert ; attaches only after the department agrees to participate on a prorated basis and the cost and expenses of the civil action of the recipient. Rep. Addy stated that he is trying to distribute the burden according to the distribution of the benefit. He thinks that the department should be entitled to a pro-rated share of anything they have helped recover. Motion seconded by Rep. Darko.

Rep. Rice offered a substitute motion if in the event that the state would or would not elect to participate, their recovery is limited to 50%. If they elect to participate in the cost then they can have the full recovery. Motion seconded by Rep. Addy. A vote on the amendment was called for and CARRIED unanimously.

Recommendation and Vote: Rep. Mercer made a DO PASS AS AMENDED motion, seconded by Rep. Darko. A vote was taken and CARRIED with Rep. Brown voting No.

DISPOSITION OF HOUSE BILL 231

Motion: Rep. Gould made a DO PASS motion, seconded by Rep. Addy.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Brown moved his proposed amendments (EXHIBIT 10), motion seconded by Rep. Gould.

Rep. Mercer questioned Rep. Brown regarding those citizens who currently have a motorcycle endorsement. Would they have to go through a safety program or can they just renew their

DAILY ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date FEB. 1, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

REVISED STANDING COMMITTEE REPORT AS OF FEBRUARY 4, 1989

February 4, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that HOUSE BILL 204 (first reading copy -- white) do pass as amended.

Signed: Dave Brown
Dave Brown, Chairman

And, that such amendments read:

1. Page 3, line 6.

Strike: "and"

2. Page 3, line 8.

Strike: "."

Insert: "; and"

3. Page 3; line 9.

Following: line 8

Insert: "(iii) is only for one-half of the amount of medical assistance paid if the department or county did not participate pro rata in the costs and expenses of the action."

4. Page 3, line 15 through line 5 on page 4.

Strike: subsections (c) and (d) in their entirety

Renumber: subsequent subsection

5. Page 5, line 18.

Strike: "and"

Insert: "or"

Strike: "are"

6. Page 5, line 19.

Strike: "jointly and severally"

Insert: ", who has received actual notice that the department or county has paid medical assistance, is"

EXHIBIT 9
DATE 2-1-89
HB 204

PROPOSED AMENDMENTS TO HB 204
(Introduced Bill)
RE: SRS medical lien

1. Page 3, line 15 through page 4, line 5
Following: Line 14
Strike: subsection (c) on page 3 and subsection (d) on page
4 in their entirety
Renumber: subsequent subsections

2. Page 5, line 18 through line 19
Following: "(c)"
Strike: remainder of line 18 through "severally" on line 19
Insert: "A recipient or his legal representative who has
received actual notice that the department or county
has paid medical assistance is"

Submitted by: *Ross Carter*
Department of Social and
Rehabilitation Services

MINUTES

MONTANA SENATE 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce Crippen, on March 9, 1989,
at 10:00 a.m.

ROLL CALL

Members Present: Chairman Bruce Crippen, V. Chairman Al
Bishop, Senators Tom Beck, Bob Brown, John Harp, Mike
Halligan, Loren Jenkins, Joe Mazurek, R. J. Pinsoneault
and Bill Yellowtail

Members Excused: None

Members Absent: None

Staff Present: Staff Attorney Valencia Lane and Committee
Secretary Rosemary Jacoby

Announcements/Discussion: None

HEARING ON HOUSE BILL 204

Presentation and Opening Statement by Sponsor:

Representative John Cobb of Augusta, District 42, opened the hearing. He said the bill was to allow the placing of an SRS or county lien on, rather than subrogation interest in, a third-party recovery by a recipient whose medical expenses were paid by the department or county. He said that SRS and AFDC may be paying benefits for a party on welfare. If that person wins a lawsuit for a large amount of money, this bill will grant SRS authority to ask for some recovery by allowing a lien to be used to obtain the money. The hospitals and doctors already have this right and the SRS should also, he stated. The House amended the bill to provide that, unless the SRS pays the attorney fees, then the SRS is only entitled half of the recovery. This would make the SRS pay the attorneys fees which the hospitals and the doctors don't have to do, he added.

List of Proponents:

Russell Cater, Social and Rehabilitative Services

Michael Sherwood, Montana Trial Lawyers Association
Jacqueline Tirrell, American Insurance Association

List of Opponents: None

Testimony:

Russell Cater said the medicaid program is a joint federal and state and the general relief medical program is a 100% state-funded program. The general relief program is actually paying for the cost of medical records of indigents who are not eligible for federal programs, but who are in need of medical assistance. The department collected \$630,000 as the result of the current law which allows the department to obtain a subrogation right against medical assistance from 3rd party, liable parties.

The typical case would be a welfare recipient who was injured in an auto accident, he said. That individual would receive medical assistance in a hospital and the hospital would bill the state of Montana for those services. A typical case would be about \$5200, he told the committee. Some time later, the department might learn that the injured party was in the process of suing the party who caused the accident. The department would then insert its rights, usually against the insurance company.

The department is interested in the state's ability to recoup from the settlement the amount paid the individual for the cost for treatment of the injury. Currently the department has a subrogation right -- an "equitable" right, not an absolute right. A judge or jury, therefore, might decide that the injured party was not made "whole" by the settlement; therefore, the department should not receive any amount or maybe a just a fraction of the amount paid for medical assistance. In a case in Great Falls, there was an \$875,000 settlement. The attorney and the judge determined that the SRS should not receive any amount whatsoever, in spite of the fact that they had contributed \$177,000 for medical assistance. As an attorney for the state, he felt it was his right to plug "loop holes" to assure the state's recovery in cases such as these. He presented written testimony to the committee with additional information (Exhibit 1) The department, he said, would be willing to pay reasonable attorney fees and costs.

Rep. Addy and Rep. Rice tacked on the amendment in the House committee and he thought there had been some misunderstanding on some portions of the bill. Since then,

he said, he had talked with Rep. Addy about another amendment (Exhibit 1, page 5) which would take care of his concerns, as well as some of the department's concerns. The representatives, he said, wanted the department to commit itself to payment of the attorney fees, whether or not the department received any money whatsoever. This would make the department responsible for the investigation which could be difficult to conduct. He said Worker's Comp has this problem and have opted to settle for 50%, rather than investigate. He felt SRS should not be in that same situation. If they did, it would cost a considerable amount out of the general fund of the state of Montana. (Exhibit 1, p. 3). Federal regulations might allow only 50% reimbursement, rather than the normal 70%, he said, if the bill was left in its present form. Other provisions put Montana statute in compliance with federal law, he stated. He urged support of the bill.

Michael Sherwood said he opposed the bill when it was in the House because SRS would have approval of settlement power and a liability would be placed on the plaintiff's attorney when, in fact, he (the attorney) didn't know of the presence of a lien. When (House) amendments were made regarding those points, he no longer opposed the bill, he said.

Jacqueline Tirrell reiterated Michael Sherwood's views and no longer opposed the bill.

Questions From Committee Members: Senator Mazurek asked if Mike Sherwood supported Mr. Cater's new amendments. Mr. Sherwood said he had not been concerned with the 50% lien that the House Judiciary Committee had objected to and did not object to the new amendments being proposed. Jacqueline Tirrell said she would review them.

Senator Mazurek said there was no requirement that the notice by the county of the recipient be in writing. He asked if Mr. Caters would object to placing that requirement in subsection (1) of Section 1. Russell Caters said there were other provisions on page 7, line 16 requiring a certified letter or "actual" notice. He said that, in some instances, it was not known by the department that a law suit had been filed. It would be difficult for the department to give notice when it wasn't aware of the suit. However, when a welfare recipient comes into the office, he stated, he is required to sign a form making him aware of the rights of the state to recover costs in a case.

Senator Halligan asked if using a lien didn't take longer to process than using subrogation rights. Russell Cater said

that some lien laws require a lengthy requirements, but in this situation, that would not apply. In 99% of the cases, the parties don't go to court, he stated.

Senator Crippen asked about the amendment limiting attorneys' liability. Russell Cater said they did not have any opposition to changing the definition of "legal representative" to "attorney".

Closing by Sponsor: Representative Cobb closed the hearing.

DISPOSITION OF HOUSE BILL 204

Discussion: None

Amendments and Votes: Senator Mazurek MOVED the amendments proposed by the SRS. (Exhibit 7) The MOTION CARRIED UNANIMOUSLY.

Senator Bishop MOVED the Crippen amendment MOVED to amend on p. 8, l. 25 through p. 9, line 3, following "attorney" to strike the remainder of line 25 through "corporation" on p. 9, line 3, to answer concerns he had regarding too much responsibility on the legal representative. He said he had talked with the department about that and they had no problem with his suggestion.

Recommendation and Vote: Senator Jenkins MOVED that House Bill 204 BE CONCURRED IN AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

HEARING ON HOUSE BILL 206

Presentation and Opening Statement by Sponsor:

Representative Budd Gould of Missoula, District 61, opened the hearing. He said the bill was simply a housekeeping measure. Its purpose was to suspend a driver's license for failure to appear and to pay for proof of insurance.

List of Testifying Proponents and What Group they Represent:

Peter Funk, Department of Justice
Wallace Jewell, Montana Magistrates Association

List of Testifying Opponents and What Group They Represent:

None

51st LEGISLATIVE SESSION -- 1989

Date 3-9-89

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN	✓		
SENATOR HALLIGAN	✓		
SENATOR HARP	✓		
SENATOR JENKINS	✓		
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

March 10, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 204 (third reading copy -- blue), respectfully report that HB 204 be amended and as so amended be concurred in:

Sponsor: Cobb (Crippen)

1. Page 3, line 6.

Following: "~~and~~"

Insert: "and"

2. Page 3, lines 8 through 12.

Following: "2" on line 8

Strike: remainder of line 8 through "ACTION" on line 12

3. Page 4.

Following: line 23

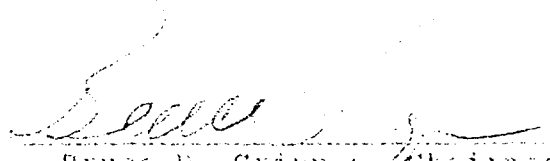
Insert: "(d) In all cases of payment to the department or county out of an amount collected from a third party or insurer on a recipient's claim, the amount of the lien must be reduced by a pro rata share of attorney fees and costs as provided in subsection (3)(c), but the department or county may not be required to participate in payment of attorney fees and costs unless the recipient's claim results in recovery out of which the department or county receives full or partial payment of its lien."

4. Page 8, line 25 through page 9, line 3.

Following: "attorney" on line 25

Strike: remainder of line 25 through "corporation" on page 9, line 3

AND AS AMENDED BE CONCURRED IN

Signed 
Bruce D. Crippen, Chairman

4/10/89
J. P.

HOUSE BILL 204SUMMARY OF AN ACT AMENDING SECTION 53-2-612, MCA
(Medical assistance lien)

Present law grants SRS a subrogation interest in recipient recoveries against liable third parties to the extent the department has paid medical benefits. The right of subrogation is an equitable right and, under current law, SRS recovers nothing until the recipient is "made whole". Thus, even though SRS has paid, for example, \$150,000 in medical expenses and the recipient recovers \$500,000 from a liable third party, the department may receive none of the \$500,000 recovery because the recipient may have a right to proceed against yet another third party or the \$500,000 may have been allocated by the court or by agreement of the parties to non-medical damages. SRS believes the liable third party, rather than medicaid or the general relief medical program, should bear the cost of the recipient's medical expenses.

This Act would assure repayment to SRS upon a recipient's recovery from a liable third party. This would be accomplished by the following provisions of the bill:

(1) Change the right of subrogation to a lien taking effect upon notice as defined in the Act. A lien would attach to the proceeds of any recovery and would not be subject to reduction based upon other potential recovery by the recipient or allocations of damages by the court or parties. A county paying medical public assistance benefits would be entitled to the same lien. The bill would place SRS on an equal footing with hospitals and other health care providers who are granted liens under existing law. The department would retain the discretion to accept less than full payment in hardship cases.

(2) Strengthen notice requirements for recipients and their representatives, including attorneys, who assert claims or file suits for recovery and establish liability for failure to notify. The recipient or his representative would be required to notify SRS and the liable third party or his insurer. If the liable third party or his insurer were not given notice by the recipient or his legal representative and then paid the claim without paying SRS, the recipient and his legal representative would be liable to SRS for the amount it would have otherwise been entitled to recover. Liability exists only if the legal representative or recipient has actual notice that SRS or the county paid the medical expenses.

(3) Remove provision guaranteeing 1/3 of settlement or recovery to recipient. Although SRS believes this provision creates an extra incentive for recipients to seek recovery, the federal government has notified SRS that this provision is contrary to federal law. That is, the federal government calculates the repayment due to it from SRS based upon the entire amount

received by the recipient, rather than the amount remaining to SRS after payment of attorney fees, costs and the 1/3 minimum recipient's share. If the current 1/3 provision is retained, the state may be required to refund to the federal government more money than SRS in fact receives from a recipient's recovery. This would in turn preclude any recovery for the state general fund in some cases and may even require additional general fund expenditures to make up the full share of the federal government's recovery.

(4) Priority of lien. SRS lien is on the same priority as the medical provider liens. An attorney's lien, however, has a higher priority.

(5) Estate recovery. Existing statutes on SRS lien rights and estate recovery rights are clarified and brought into conformance with federal law. This bill removes the authority of SRS to file a lien against a deceased person's property when a surviving spouse is residing in the home. See 53-2-611(2) [page 12] and 53-6-143 (2)(b) [page 10-11].

(6) Fiscal impact. The fiscal note contains a very conservative estimate of increased revenues based upon HB 204's stricter notice requirements. Failure to change the state and counties subrogation right to a lien could drastically reduce the monies recouped from liable third parties and their insurers. One case last year resulted in SRS's failure to recoup \$177,458. A lien rather than subrogation would have required re-payment to SRS.

Medicaid recovered \$630,000.00 last year from tort cases alone. The same is expected this year and future years could reach the million dollar mark. Without this legislation these recoveries would be jeopardized.

Submitted by: *Russell E. Coker*
Department of Social &
Rehabilitation Services

Fiscal Analysis of Amendments Added by the
House Judiciary Committee to HB 204

The House Judiciary Committee added an amendment to HB 204 which will reduce the amount of recoupment allocated to the department of Social and Rehabilitation Services for medical expenditures. Recoupment is required if a third party (or their insurer) is responsible for injuries caused to a recipient of medicaid or general relief medical. The amendment adds subsection (3)(iii). (See page 3, l. 9-12, third reading copy.)

The amendment requires the department to guarantee the payment of "costs and expenses" (i.e. attorney fees) whether the claim is successful or not. If this guarantee is not made the department will receive only 50% of medical payments paid. The intent of the House Judiciary Committee amendment was to equate welfare recoupment of medical expenses with the system used by Workers' Compensation. There are two main differences in the two programs. First, neither welfare recipients or their employers are paying premiums to become eligible; secondly, medicaid and general relief medical are already required by law to pay a pro rata share of attorney fees and costs if money is received. (See 53-2-612(e) now subsection (c) on page 4.) The department is willing to continue this approach to the sharing of costs and fees but opposes payment if the department is to receive nothing from the claim.

The department cannot enter into contracts with attorneys in medicaid lien cases for the following reasons:

1. The department does not have the staff to investigate and evaluate whether contracted services are more beneficial to the state than acceptance of a 50% return on medical expenses paid.
2. The department does not have the appropriation to pay fees and costs up front.
3. The department is not in a position to risk Federal and General Fund dollars on unsuccessful cases.
4. By entering into contracts, the department will be required to report recoveries under a specific federal rule which allows federal reimbursement for only 50% of administrative expenses. The department currently receives 70% federal reimbursement because a different reporting method is allowed for recoveries or payments of benefits. Contracting with attorneys would result in \$68,706 less General Fund recovery per year.

If the department does not enter into contracts to guarantee payment of fees and costs, it would recover medical payments based on the provision allowing recovery of 50% of the department's claim. Use of this provision would result in \$38,691 less

General Fund recoveries per year. The total reduction (federal and state) in recoveries would be \$128,970 per year. Or arguably, if attorney fees and costs are subtracted from the department's recovery amount, then General Fund recoveries would be \$90,741 less per year. (See 53-2-612(3)(e) new subsection (c) on page 4 of HB 204.)

CONCLUSION

The department recommends adoption of the attached amendments to offset the detrimental fiscal impact resulting from the amendments added by the House Judiciary Committee. These amendments address the concerns of the House Judiciary Committee that the department contribute to attorney fees and costs. The amendments, however, also place the department in a better position to offset the federal sanctions. This is accomplished not by requiring the department to enter into a contract prior to a settlement, but rather by requiring a reduction in the actual amount to be received by the department based upon a pro rata sharing of costs and attorney fees.

Submitted by: *Russell E. Carter*
Department of Social and
Rehabilitation Services

PROPOSED AMENDMENT TO HOUSE BILL 204
(Third Reading Copy)

1. Page 3, line 8
Strike: "; AND"
Add: "."
2. Page 3, lines 9 through 12
Strike: lines 9 through 12 in their entirety
3. Page 4, following subsection (3)(c)
Insert: "(d) In all cases of payment to the department or county out of an amount collected from a third party or insurer on a recipient's claim, the amount of the lien must be reduced by a pro rata share of attorney fees and costs as provided in subsection (c), but the department or county shall not be required to participate in payment of attorney fees and costs unless the recipient's claim results in recovery out of which the department or county receives full or partial payment of its lien."

Rationale: The proposed amendment would strike subsection (3)(a)(III) which suggests that participation by the department or county in attorney fees and costs is optional. New subsection (3)(d) would clarify that whenever a recipient recovers on a claim and payment to the department or county is required, the amount of the payment must be reduced by a pro rata share of attorney fees and costs. The new subsection would also clarify that the department or county is not required to share in attorneys fees and costs unless it receives full or partial payment of its lien.

Submitted by:
Department of Social and
Rehabilitation Services